

(Feb. 11, 1903, ch. 544, §2, 32 Stat. 823; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, §17, 62 Stat. 989; Pub. L. 93-528, §5, Dec. 21, 1974, 88 Stat. 1709.)

#### REFERENCES IN TEXT

The Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

#### CODIFICATION

Section was previously set out in both this section and in section 45 of former Title 49, Transportation.

#### AMENDMENTS

1974—Pub. L. 93-528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

1948—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc. See sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

1944—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

#### CHANGE OF NAME

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted “district court” for “circuit court”.

#### EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93-528 provided that: “The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; [former] 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

#### EFFECTIVE DATE OF 1944 AMENDMENT

The last paragraph of act June 9, 1944, provided: “This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944].”

#### SHORT TITLE

Act Feb. 11, 1903, which enacted sections 28 and 29 of this title, is commonly known as the “Expediting Act”.

### **§ 30. Repealed. Pub. L. 107-273, div. C, title IV, § 14102(f), Nov. 2, 2002, 116 Stat. 1922**

Section, act Mar. 3, 1913, ch. 114, 37 Stat. 731, provided that depositions for use in suits in equity brought under sections 1 to 7 of this title would be open to public.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable to cases pending on or after Nov. 2, 2002, see section 14103 of

Pub. L. 107-273, set out as an Effective Date of 2002 Amendment note under section 3 of this title.

### **§ 31. Repealed. Pub. L. 107-273, div. C, title IV, § 14102(a), Nov. 2, 2002, 116 Stat. 1921**

Section, act Aug. 24, 1912, ch. 390, §11, 37 Stat. 567, related to closure of Panama Canal to violators of anti-trust laws.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as a note under section 3 of this title.

### **§§ 32, 33. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929**

Section 32, act Feb. 25, 1903, ch. 755, §1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

#### EFFECTIVE DATE OF REPEAL

Repeal effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

#### SAVINGS PROVISION

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

### **§ 34. Definitions applicable to sections 34 to 36**

For purposes of sections 34 to 36 of this title—

(1) the term “local government” means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term “person” has the meaning given it in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term “State” has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98-544, §2, Oct. 24, 1984, 98 Stat. 2750.)

#### EFFECTIVE DATE

Section 6 of Pub. L. 98-544 provided that: “This Act [enacting this section, sections 35 and 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984].”

**§ 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity**

**(a) Prohibition in general**

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

**(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition**

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98-544, § 3, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsection (b), see Effective Date note below.

The Clayton Act, referred to in subsections (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

**§ 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity**

**(a) Prohibition in general**

No damages, interest on damages, costs or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

**(b) Nonapplication of prohibition for cases commenced before effective date of provisions**

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98-544, § 4, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For effective date of this Act, referred to in subsection (b), see Effective Date note below.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

**§ 37. Immunity from antitrust laws**

**(a) Inapplicability of antitrust laws**

Except as provided in subsection (d) of this section, the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

**(b) Immunity**

Except as provided in subsection (d) of this section, any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

**(c) Treatment of certain annuities and trusts**

Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

(1) in any filing by the donor with the Internal Revenue Service; or

(2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this section and section 37a of this title to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

**(d) Limitation**

Subsections (a) and (b) of this section shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) of this section shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.

(Pub. L. 104-63, § 2, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105-26, § 2(1), July 3, 1997, 111 Stat. 241.)

REFERENCES IN TEXT

For definition of "antitrust laws", referred to in text, see section 37a(1) of this title.

AMENDMENTS

1997—Pub. L. 105-26 amended section generally. Prior to amendment, section related to modification of antitrust laws to allow two or more charitable organizations to use, or to agree to use, the same annuity rate in issuing one or more charitable gift annuities and to limitations on such conduct.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 3 of Pub. L. 105-26 provided that: "This Act [see Short Title of 1997 Amendments note set out under